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No. 90-1392

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

WILLIAM E. CURRIER and
ROBERT C. BRAUN,

PETITIONERS,

VS.

CHARLES J. BALDRIDGE and
ROBERT DALE OSBORN,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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REBUTTAL

Petitioners appear herein pursuant to Rule 15.6, RULES OF THE SUPREME COURT of the UNITED STATES, to oppose arguments first raised in BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI (Resp. Brief) filed on March 22, 1991.

Petitioners take exception to the following statements in Resp. Brief as being misleading and detractive of the issues presented by petitioners in their PETITION filed on March 4, 1991.

Page 2 of Resp. Brief states:

> "The striking of Officer Baldridge was confirmed by independent witnesses."

and on page 9 they said:

> "However, the testimony of the respondents was supported by independant witnesses."

These are misleading statements because in fact, <u>all</u> eye witnesses who testified supported Currier's claim that contact of the process paper service was upon

Sgt. Baldridge's arm. That is, all the witnesses except Sgt. Baldridge. Some of these eye witnesses provided "Asseveration" statements to the court below describing this contact as a "touching on the arm".

This only helps elucidate the real "genuine" issue in this drama, i.e. whether or not the subjective verb "strike" herein was of such magnitude that it could be construed as "violence" necessary to meet the criteria called for in Wisconsin Statute Section 947.01. And, did Sgt. Baldridge fabricate "pain in the kidney area" caused by "fist and papers" when he swore to the truth of that matter in front of the prosecuting Assistant District Attorney who endorsed the Criminal Complaint on the assumption that violence occurred? And, did the criminal trial acquittal of Currier establish that Sgt. Baldridge's bizarre claim of violence had no basis in fact? Excerpts of criminal trial transcripts

from petitioners' trials were used in support of their claims that false swearing by Sgt. Baldridge occurred at the criminal trials. How could there be "...not a scintilla of evidence..." to support their claims when petitioners supplied this kind of evidence to the court below that denied the existance of evidence?

Petitioners concede that if violence did in fact occur, then the criminal trial court's finding of probable cause to arrest might stand. But the absence of violence is a genuine issue in dispute here. Reasonable cause based upon one officer's testimony must disappear when several witnesses testify contradictory facts that a jury finds more credible and acquits on the violence issue.

****

Petitioners take exception to the misleading arguments on relitigation on pages 4, and 8 - 9 of Resp. Brief wherein

they fail to mention that the criminal trial appeal arguments concerned only one Disorderly Conduct charge for which Currier and Braun were each convicted. Sgt. Baldridge endorsed (under penalty of perjury) the Criminal Complaints of seven charges against petitioners, five of which fell by acquittal. Petitioners have claimed that it was the respondents who instigated and contrived all arrests after the seizure of Currier, notwithstanding petitioners convictions which resulted from that trap.

The merits of the probable cause to arrest Currier and Braun for the charges for which they were convicted have been purposely avoided by petitioners in this lawsuit notwithstanding the multiplicitous nature of those charges and the motivating nexus between those convictions and the initial arrest that fell by acquital. Arguing over the merits of conviction now would be an effort in futility. Instead petitioners have proffered evidence to show

that the alleged reasonable cause to arrest for the initial seizure on February 19, 1986, was destroyed by Currier's exoneration of the violence charge in the Criminal Complaint. Respondents claim of relitigation attempts by petitioners has no basis in fact beyond Currier's initial seizure which is bereft of legitimate cause. What caused Currier's seizure arrest was probably retaliatory spleen. Therefore, the last paragraph on page 6 of Resp. Brief is also untrue.

****

Petitioners take exception to the statement on page 7 of Resp. Brief that claims:

> "In light of the record, petitioners offer nothing to show the respondents 'exceded' their authority".

This statement is confusing because false swearing to affect an arrest warrant and seizure arrest without reasonable cause certainly are in excess of authority, and

the record proffered by petitioners in Question # 1 and argued on pages 11 - 15 of the PETITION show respondents culpability. Perhaps the rules require a direct quotation of declarants to "show" a dispute exists rather than stating just where those declarations had been presented as evidence to the courts below. These declarations were presented within "Asseveration" copies in the appendix of petitioners' briefs to both of the courts below. The RULES OF THE SUPREME COURT of the UNITED STATES prevent photocopying of documents, so those documents could not be included within the appendix of this PETITION. Some of the declarations within the Asseverations presented to the courts below are therefore provided verbatim now: UNITED STATES DISTRICT COURT - EASTERN DISTRICT OF WISCONSIN, Case No. 88-C-191, ASSEVERATION IN SUPPORT OF PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, filed April 11, 1989, NANCY KNIES

HEREBY ASSEVERATES AND STATES AS FOLLOWS:

1. That her sincerely held religious beliefs compel this Asseveration to supercede the customary "sworn affidavit" to comply with Scripture, (citations omitted);

...4. That she has complained to New Berlin Police Chief Michael R. Hanrahan during a conference in his office prior to February 19th, 1986 regarding discourteous, authoratarian, and deceptive actions of certain New Berlin Police Officers. That Sgt. Charles J. Baldridge was mentioned to Chief Hanrahan during their conversation as one of the offending officers.

5. That on or about February 13th, 1986, she mailed a three page "COUNTERCLAIM" in a civil action, with her return address clearly printed on the envelope, to Charles J. Baldridge at his home residence. The envelope was returned unopened. The envelope was marked, "Refused Return to Sender".

...7. That she met William E. Currier while he was a West Allis Police Officer many years ago, knew him well and knew that he was familiar with legal procedures.

8. That William E. Currier was in the New Berlin Municipal Courtroom on February 19th, 1986, at about 8:30 PM, where she spoke to him about the "COUNTERCLAIM" naming Charles J. Baldridge as a party, and that she asked Mr. Currier to serve those legal papers upon Mr. Baldridge,...

9. That Charles J. Baldridge was in the New Berlin Municipal Courtroom in their visible presence for about 15 minutes prior to court recess, including the time she spoke to Mr. Currier.

...11. That Mr. Currier told her that when he attempted to serve Mr. Baldridge he refused to accept service, saying he didn't want the papers.

12. That she and her husband then advised Mr. Currier that he could simply touch Mr. Baldridge with the legal papers and Mr. Baldridge would then be considered legally served.

13. That as Mr. Baldridge reentered the courtroom, prior to court reconvening, she saw Mr. Currier walk up to Mr. Baldridge, touch him on his upper arm with the legal papers, drop them at his feet and announce that Baldridge was served.

14. That immediately after being served, and without hesitation, Mr. Baldridge turned to face Mr. Currier and she heard him say, "Now you're under arrest!"

...17. That she watched the entire episode from the time Mr. Currier touched Mr. Baldridge with the legal papers until Mr. Baldridge led Mr. Currier out of the courtroom in handcuffs, and that at no time did she see Mr. Currier or Mr. Braun strike or push Mr. Baldridge.

...20. That she was standing close to Robert Braun in the lobby area of City Hall when Mr. Currier fell as he was being led handcuffed amongst those of us in the lobby.

21. That she heard Robert Braun exclaim something concerning police treatment of William Currier as he fell.

22. That she then watched Robert Braun, and although Mr. Braun did nothing physical to provoke the police, she saw two police officers seize Mr Braun, force him to his

knees over a bench and pull his arms behind his back to handcuff him.

...Dated April 1, 1989, Signed Nancy Knies

...CERTIFICATION, Affirmed and Subscribed, State of Wisconsin, Milwaukee County...

We, the undersigned, all know Nancy Knies personally and witnessed her affirm and sign this Asseveration in our presence on April 1, 1989. /S/ /S/ /S/

[authority quoted] [citations omitted]

These claims contradicted the Criminal Complaint, a copy of which is shown in the appendix of petitioners brief to the court below, wherein Sgt. Charles J. Baldridge claimed:

> "Sergeant Charles Baldridge, City of New Berlin Police Department, being first duly sworn, on oath, upon information and belief, says that:
>
> COUNT #1 D.C.
> On February 19, 1986, at approximately 8:43 p.m, at New Berlin City Hall, at 3805 S. Casper Drive, City of New Berlin, Waukesha County, Wisconsin, the defendant, William E. Currier, did:
>
> in a public place engage in violent or otherwise disorderly conduct in that the defendant did strike uniformed police officer Charles Baldridge of the New Berlin Police De-

partment under circumstances in which such conduct tended to cause or provoke a disturbance, contrary to Section 947.01 Wisconsin Statutes."

...

"Subscribed and sworn to before me this 20th day of February, 1986."

"/S/
Assistant District Attorney"

These are but a small portion of the documents presented in appendixes of petitioners' briefs to the courts below and respondent is entirely incorrect in several of their statements, e.g.:

"The general theme of their petition involves vague allegations and unsupported assertions of protected conduct."

and,

"They [petitioners] show nothing to indicate the lower courts 'ignored' relevant evidence, in light of the fact that the petitioners were free to call, and did call, witnesses in the criminal trials."

and,

> "These issues could have been raised prior to this petition but they were not so raised."

These statements are untrue and/or misleading. They are typical of the general animadversions used frequently in Resp. Brief that amount to misrepresentation. Respondents' counsel is fully aware of all the facts within petitioners' appendixes to the courts below yet Resp. Brief suggests otherwise.

On page 10, Resp. Brief, they continue to promote error adopted by the courts below, i.e.:

> "Service of pleadings does not afford First Amendment protection for illegal acts such as disorderly conduct or striking an officer."

Respondents continue to try to mislead on this point. For the umpteenth time: CURRIER WAS ACQUITTED OF THAT CHARGE! Baldridge said "strike" but petitioners used the word "touch" to describe the contact that precipitated this maze.

****

Petitioners take exception to arguments on page 12 of Resp. Brief, particularly the statement:

> "The standards followed by the Federal District Court and the Court of Appeals for the Seventh Circuit specifically track those of this Court and no record for a 'departure' has even been suggested."
> "...[citing to Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986), ...Anderson v. Liberty Lobby Inc., 477 U.S. 242, 249-50 (1986)]"

The reliance by the court below on Celotex Corp. v. Catrett, id, and Anderson v. Liberty Lobby Inc., id, can only be explained by surmising that petitioners "Asseveration" declarations were disallowed as being unacceptable. Declaratory evidence that manifests fraud and false swearing by the complaining police officer to affect arrest certainly would have been addressed by the courts below if it were considered. When the court said petitioners had "...not produced a scintilla of

evidence...", the only conclusion one can reach is that this was legalese, meaning rejection of petitioners form of evidence. Are we to now adopt a new meaning for the term "genuine"?

Another exception that petitioners must address concerning this concept is on page 7, Resp. Brief, where they claim:

> "...no genuine issue of material fact exists..."

Respondents have suggested that the issue of "credibility" was decided at the criminal court proceedings. Petitioners would agree that exoneration on five of the seven criminal counts against them certainly reflects on respondents credibility. Petitioners have abandoned (because of complexity) attacking the reasonable cause to arrest on six of those counts. Proof exists that there was a complete absence of legitimate cause for Currier's initial arrest, and notwithstanding the trial court's finding of probable cause based on the

Criminal Complaint that swore to Currier's violence, his acquittal on that charge establishes that false swearing was at least a possibility, a possibility that becomes a "genuine" issue of material fact in dispute.

****

The only reference in Resp. Brief to Question # 3 of the PETITION is on page 13, where respondents state:

> "They show nothing to indicate the lower courts 'ignored' relevant evidence."

This is not true! To clarify the PETITION argument at page 7 on this issue, petitioners provide this axiomatic analysis: Assuming that the declared statements, etc., within the appendixes of petitioners' briefs, filed with the case file records in the courts below, did manifest false swearing and the absense of reasonable cause for the seizure arrest of Currier, this Court then must determine if the courts failure to address unsworn declar-

atory evidence, under the circumstances presented herein, is reversable error.

This is an important issue! The courts below have raised duel questions, i.e.: 1) based upon the record before them, was there "...not produced a scintilla of evidence..." to support petitioners' claims, as the District Court maintained and the Seventh Circuit Court digressed in addressing, or; 2) did these courts correctly disallow unsworn "Asseveration" statements which contradict the police officer's sworn claim of violence to support probable cause to arrest?

If petitioners' "Asseveration" (in lieu of affidavit) statements were disallowed by the courts below, than a disparity does exist, at least between the Ninth Circuit Court of Appeals, wherein the court, in Gordon v. Idaho, 778 F2d 1397 (1985), allowed unsworn testimony to become evidence based upon sincerely held religious belief against oathtaking in a similar

matter.

The preclusion by the courts below of unsworn "Asseveration" statements would be a "...decision in conflict with another United States Court of Appeals on the same matter..." [Rule 10.1(a)] which would merit attention by the High Court. This conflict is applicable only if false swearing to affect arrest is a "genuine" issue.

****

Petitioners take exception to respondents claim on page 7, Resp. Brief:

> "The District Court granted Summary Judgment on the issue of probable cause relating to the arrests, and the Seventh Circuit Court of Appeals Affirmed that decision."

This is not entirely true! What the Seventh Circuit Court said was:

> "Contrary to the defendants' assertion, the conviction does not collaterally estop Currier from asserting the invalidity of his initial arrest."

The Seventh Circuit Court realized that "Currier's wrongful arrest claim is more

problematic", as they said in the Written Decision. The only way to provide a cause to arrest that might fit within the parameters of Wis. Stat. Sec. 947.01 was to look at the "...or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance..." provision and mold the law to fit the circumstance that gave rise to that arrest. Disregarding the matter of intent, an essential consideration in all crimes at one time, the Seventh Circuit Court ruled carte blanche that: "...<u>any</u> physical contact within a courtroom between a police officer and a private citizen would 'tend to cause or provoke a disturbance'..."! Henceforth, intent will not be a consideration when charging an accused person with the crime of Disorderly Conduct in the State of Wisconsin, if not the entire Seventh Circuit. Is this not judicial legislation of state law?

It will not be long, under the

doctrine of reductio ad absurdum, before some police officer may be found chasing an offensive person around a courtroom with the knowledge that if he can touch the offender he can affect an arrest for Disorderly Conduct to use as a lesson in attitude adjustment.

****

OVERREACH

Petitioners take exception to the first sentence on page 10, Resp. Brief:

> "Thus, the petitioners are precluded from rearguing the issue of credibility."

Petitioners have covered this concept of their recognized right to address and challenge fraud and false swearing alleged to have influenced the judicial determination that probable cause to arrest existed.

Respondents never argued the merits of the cause of Currier's seizure arrest and relied on the criminal courts judgment in examining Sgt. Baldridge's reasonableness to affect that seizure and subsequent

warrant.

When petitioners provided affidavit type statements impugning Sgt. Baldridge's credibility respondents could have, if possible, provided affidavits in opposition to those credibility destroying documents. But that would have provided their own confirmation of a fact in contention, necessitating trial on the merits. They were wise to "let the sleeping dog lie" because the Seventh Circuit Court "reached" for arguments in support of respondents' cause and provided the inescapable "any physical contact" criteria that overcame the credibility controversy (a minor consideration in todays standards of police conduct) and, presto, reasonableness was present from the beggining, even if the judge at the probable cause hearing didn't consider that "any physical contact" would suffice to force Currier to answer for his criminal conduct.

Dated April 3rd, 1991.

Signed, _____

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Cosigned, _____

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LATE DISCOVERY

Unsupported suppositions made and conclusions drawn therefrom by the court below show derision toward petitioners' beliefs that culminate in the "reach" which has prescribed petitioners' beliefs and conscience. They ignore the spirit and letter of this Court:

> "...for the heart of the First Amendment is the basic idea and notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State, (cites omitted)...and the freedom of belief is no incidental or secondary aspect of the First Amendment's protections."

Abood v. Detroit Board of Education,
431 U.S. 209, 234, 52 L.Ed.2d 261